IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 760 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

KATHI BADHA UGA & ANR.

Versus

STATE OF GUJ

Appearance:

Shri R.M. Chhaya, Advocate, for Shri N.D. Nanavaty, Advocate, for the Appellants-Accused

Shri K.P. Raval, Addl. Public Prosecutor, for the Respondent-State

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 11/12/96

ORAL JUDGEMENT

The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge at Junagadh on 9th September 1987 in Sessions Case No. 68

of 1986 is under challenge in this appeal under sec. 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief). Thereby the learned trial Judge convicted the appellants herein of the offences punishable under sections 333, 504 read with sec. 114 of the Indian Penal Code, 1860 (the IPC for brief) and sentenced appellant-accused No.1 to rigorous imprisonment for 3 years and fine of Rs. 100 in default rigorous imprisonment for 15 days for the offence punishable under sec. 333 thereof, and fine of Rs. 100 in default rigorous imprisonment for 15 days for the offence punishable under sec.504 and sentenced appellant-accused No.2 to rigorous imprisonment for 1 year and fine of Rs. 50 in default rigorous imprisonment for 15 days for the offence punishable under sec. 333 and fine of Rs. 50 in default rigorous imprisonment for 7 days for the offence punishable under sec. 504 thereof.

2. The facts giving rise to this appeal move in a narrow compass. The original complainant is one Mansukhlal Ramshanker Jani. He was working as the Range Forest Officer at the relevant time. His headquarters was Devaliya. It was his case that he was proceeding from Devaliya to Junagadh for his official work on his motorcycle on 25th March 1985 between 8.30 and 9 a.m. He was accompanied by his Fire Guard, named, Ranaji Mandji. When they reached village Malanka they found both the appellants-accused standing on the road. They detained the complainant and his companion. The appellants-accused took exception to the attempt on the part of the complainant and his companion in detaining carts carrying wood from the forest. Thereafter the appellants-accused assaulted them with their sticks. The complainant received injury in his right hand in order to stave off the blow on his head by the appellants-accused. In the process, the stick hit on his right thumb and it was fractured. That blow was given by appellant-accused No.1 Appellant-accused No.2 was also about to give him blows but he could not as the complainant's companion intervened and rescued the complainant. Thereafter the complainant and his companion reached Junagadh. They informed their superior officer of the incident. He advised them to lodge a complaint to the police. Thereupon the complainant launched his complaint with the police at Mendarda at about 6.45 p.m. In view of the injuries sustained by the complainant, he was sent to the Community Health Centre at Mendarda with a police yadi. On examination the Medical Officer suspected fracture in the right thump. The complainant was thereupon referred to the Civil Hospital at Junagadh. On examination thereat a fracture was found in his right thump and he

was admitted as an indoor patient. He was discharged a day later after treatment. His complaint to the police set the machinery of investigation into motion. On completion of the investigation, a charge-sheet was submitted in the Court of the Chief Judicial Magistrate at Junagadh charging the appellants-accused with the offences punishable under sec. 333, 504, 506 Part 2 read with sec. 34 of the IPC and sec. 135 of the Bombay Police Act, 1951 (the Act for brief). It came to be registered as Criminal Case No. 2507 of 1985. It appears to have been assigned to the Judicial Magistrate (First Class), Court No.3 at Junagadh for proceeding according to law. Since the offence punishable under sec. 333 of the IPC was triable exclusively by the court of sessions, by his order passed on 5th June 1986 in Criminal Case No. 2507 of 1985, the learned trial Magistrate committed the case to the Sessions Court of Junagadh for trial and disposal. It came to be registered as Sessions Case No. 68 of 1986. It appears to have been assigned to the learned Additional Sessions Judge for trial and disposal. The charge against the appellants-accused was framed on 7th July 1987 at Ex. 1 on the record of the case. Neither appellant-accused pleaded guilty to the charge. They were thereupon tried. After recording the prosecution evidence and after recording the further statement of each appellant-accused under sec. 313 of the Cr.P.C. and after hearing arguments, by his judgment and order passed on 9th September 1987 in Sessions Case No. 68 of 1986, the learned Additional Sessions Judge at Junagadh convicted and sentenced the appellants-accused as aforesaid. The aggrieved appellants-accused have thereupon invoked the appellate jurisdiction of this Court by means of this appeal under sec. 374 of the Cr.P.C. for questioning the correctness of the aforesaid judgment and order of conviction and sentence passed by the learned trial Judge.

3. Learned Advocate Shri Chhaya for the appellants-accused has taken me through the entire evidence on record in support of his submission that the learned trial Judge was in error in coming to the conclusion that the guilt was brought home to the appellants-accused beyond any reasonable doubt. It has been urged by learned Advocate Shri Chhaya for the appellants-accused that the evidence on record would clearly disclose material infirmities in the prosecution case raising a serious doubt about commission of the alleged offence by the appellants-accused and, according to well settled principles of law, the benefit of doubt should always operate in favour of the accused. As

against this, learned Additional Public Prosecutor Shri Raval for the respondent-State has urged that the evidence on record has carefully been examined and appreciated by the learned trial Judge resulting in the finding of guilt recorded against the appellants-accused calling for no interference by this Court in this appeal.

4. Learned Advocate Shri Chhaya for the appellants-accused has invited my attention to Para 10 of the examination-in-chief of the complainant at Ex. 10. He has deposed to the effect that he had known the accused at the relevant time. In view of this factual position, learned Advocate Shri Chhaya for the appellants-accused is right in his submission that there was no reason for the complainant at Ex. 10 not to name the assailants in the history of his case given to the Medical Officer. It transpires from the material on record that the complainant at Ex. 10 was sent to the Community Heath Centre at Mendarda for treatment of his injuries. The Medical Officer of the Community Health Centre at Mendarda has been examined at Ex. 12 at trial. The certificate issued by him is at Ex. 13 on the record of the case. Therein is mentioned the history of the case as assault by somebody. It is not the case of the prosecution through the complainant's deposition or through the deposition of the Medical Officer at Ex. 12 that the complainant did give the name of the assailant but through oversight or through improper hearing the Medical Officer did not note the name of the assailant in the case papers resulting in non-mentioning thereof in the certificate at Ex. 13 on the record of the case.

5. This is not enough. As pointed out hereinabove, the Medical Officer at Ex. 12 suspected fracture in the right thumb of the complainant. The case was therefore referred to the Civil Hospital at Junagadh. The Medical Officer examining and treating the complainant at Junagadh has been examined as prosecution witness No. 1 at Ex. 7 at trial. His certificate is at Ex. 8 on the record of the case. The history of the case mentioned therein is to the effect that of alleged beating by somebody. It thus becomes clear that the complainant did not name the assailant even before the Medical Officer at Ex. 7 on the record of the case. This would pass comprehension. In his oral testimony at Ex. 7 the witness has clearly stated that he was informed by the complainant with respect to the history of the case as alleged beating by someone. It is thus clear that it was not the prosecution case that the complainant did mention the name of the assailant to the Medical Officer at Ex. 7 but that name was not inadvertently noted in the case

papers.

6. The absence of the name of the assailant in the case papers both in the Community Health Centre at Mendarda and in the Civil Hospital at Junagadh would assume importance in view of the clear-cut admission made by the complainant in para 10 of the chief examination at Ex. 10 on the record of the case to the effect that he knew the accused. The prosecution has not chosen to explain in any manner why the complainant did not name the assailant before the Medical Officers or either of them. That would certainly raise a doubt in the prosecution case, more particularly in the light of the defence version to the effect that they did not comply with the demand of bribe of Rs. 200 from them.

7. It transpires from the material on record that the complainant was accompanied by one Ranaji Mandji on his motorcycle at the relevant time. His name figured in the first information report at Ex. 11 on the record of the case. The initial investigation of the case was undertaken by one Head Constable by the name of Jayantilal Labshanker examined as Prosecution Witness No. 11 at Ex. 22 on the record of the case. He has clearly stated in his oral testimony that he did not record the statement of said Ranaji Mandji though he was shown to be the eye witness in the complaint. The witness at Ex. 22 was unable to give any reason whatsoever for his omission in that regard. It appears that he was named as a witness in the charge-sheet. He could not be examined at trial on account of his demise during its pendency. The court has thus been deprived of having independent ocular account from any other witness. Ordinarily, in view of sec. 134 of the Evidence Act, 1872, this Court would not have insisted on any corroboration from any other eye witness. Absence of corroboration of the complainant's evidence would assume importance in view of the defence version regarding the false implication of the appellants-accused on account of non-complying with the demand of bribe of Rs. 200 made by the complainant at the relevant time. In these circumstances, it would not be unsafe to rely on the sole interested testimony of the complainant at Ex. 10 for fastening the criminal liability to the accused.

8. The delay in lodging the first information report is of nearly 9 1/2 hours. The incident is stated to have occurred some time around 9.30 a.m. The first information report was lodged at about 6.45 p.m. There was thus delay of more than 9 hours. The complainant at Ex. 10 has not given any explanation for this delay.

The Officer at Junagadh in his oral testimony at Ex. 19 has tried to justify the delay by saying that the complainant remained preoccupied in his work in the office at Junagadh. The witness at Ex. 19 however pleaded ignorance as to what type of work in his office detained the complainant for that long. The complainant was working at the relevant time as the Range Forest Officer in the Gir Forest. The incident is stated to have occurred at Malanka. The complaint was lodged with the police at Mendarda. The road to Junagadh from Malanka goes via Mendarda. The complainant could have very well lodged his complaint at Mendarda before proceeding to Junagadh. Why he has not done so is anybody's guess. Even if it is assumed for the sake of argument that he had some urgent work in his office at Junagadh, he had suffered serious injuries and he could not have waited for such long for the treatment of his injuries. Besides, the normal human conduct in such circumstances would be either to go to the doctor for treatment of injuries or to go to the police station for lodging the complaint and thereafter to go to the doctor with a police yadi for treatment of injuries unless there was an urgent call of duty. The complainant has not uttered a word about any urgent call of duty at the relevant time. The delay in lodging the first information report has thus remained practically unexplained. The so-called explanation furnished by the witness at Ex. 19 is far from satisfactory and it can be styled as improvement in the prosecution version. The delay in lodging the first information report in these circumstances would also raise a serious doubt about the occurrence of the incident in view of the aforesaid defence version.

9. In view of my aforesaid discussion, I am of the opinion that the prosecution has not been able to bring the guilt home to the appellants-accused beyond any reasonable doubt. It is unfortunate that the aforesaid infirmities in the prosecution case were not noticed by the learned trial Judge while examining and appreciating the evidence on record. That has vitiated his finding of guilt recorded against the appellants-accused in his impugned judgment and order. In that view of the matter, the impugned judgment and order of conviction and sentence cannot be sustained in law.

10. In the result, this appeal is accepted. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge at Junagadh on 9th September 1987 in Sessions Case No. 68 of 1986 is quashed and set aside. The bail bonds furnished by the

appellants are cancelled.
